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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
San Francisco / Oakland Division**

Sharde Cottonham, individually and
on behalf of all others similarly
situated;

Plaintiff,

-against-

Security Credit Systems, Inc.
and John Does 1-25.

Defendant(s).

Case No.:

CLASS ACTION COMPLAINT for
violations of the Fair Debt Collection
Practices Act, 15 U.S.C. § 1692 *et seq*

Plaintiff Sharde Cottonham (hereinafter, "Plaintiff"), a California resident, brings this Class Action Complaint by and through her attorneys, against Defendant Security Credit Systems, Inc. (hereinafter "Defendant" or "SCS"), individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff's counsel, except for allegations specifically pertaining to Plaintiff, which are based

1 upon Plaintiff's personal knowledge.

2 **INTRODUCTION/PRELIMINARY STATEMENT**

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4 1. Congress enacted the FDCPA in 1977 in response to the "abundant
5 evidence of the use of abusive, deceptive, and unfair debt collection practices by
6 many debt collectors." 15 U.S.C. §1692(a). At that time, Congress was
7 concerned that "abusive debt collection practices contribute to the number of
8 personal bankruptcies, to material instability, to the loss of jobs, and to invasions
9 of individual privacy." *Id.* Congress concluded that "existing laws...[we]re
10 inadequate to protect consumers," and that "the effective collection of debts"
11 does not require "misrepresentation or other abusive debt collection practices."
12 15 U.S.C. §§ 1692(b) & (c).

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16 2. Congress explained that the purpose of the Act was not only to
17 eliminate abusive debt collection practices, but also to "insure that those debt
18 collectors who refrain from using abusive debt collection practices are not
19 competitively disadvantaged." *Id.* § 1692(e). After determining that the existing
20 consumer protection laws were inadequate~ *id.* § 1692(b), Congress gave
21 consumers a private cause of action against debt collectors who fail to comply
22 with the Act. *Id.* § 1692k.

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28 **JURISDICTION AND VENUE**

1 3. The Court has jurisdiction over this class action pursuant to 28 U.S.C.
2 § 1331, as well as 15 U.S.C. § 1692 et. seq. The Court also has pendent
3 jurisdiction over the State law claims in this action pursuant to 28 U.S.C.
4 § 1367(a).

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6 4. Venue is proper in this judicial district pursuant to 28 U.S.C.
7 § 1391(b)(2) as this is where a substantial part of the events or omissions giving
8 rise to the claim occurred.

9 10 **NATURE OF THE ACTION**

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12 5. Plaintiff brings this class action on behalf of a class of California
13 consumers under § 1692 et seq. of Title 15 of the United States Code, commonly
14 referred to as the Fair Debt Collections Practices Act ("FDCPA"), and
15

16 6. Plaintiff is seeking damages and declaratory and injunctive relief.

17 **PARTIES**

18 7. Plaintiff is a resident of the State of California, County of Contra
19 Costa, residing at 223 Obsidian Way, Rodeo, CA 94547.

20
21 8. Defendant SCS is a "debt collector" as the phrase is defined in 15
22 U.S.C. § 1692(a)(6) and used in the FDCPA with an address at 100 River Rock
23 Drive, Suite 200, Buffalo, New York 14207.
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9. Upon information and belief, Defendant is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

10. Defendant is a "debt collector", as defined under the FDCPA under 15 U.S.C. § 1692a(6).

11. John Does 1-25, are fictitious names of individuals and businesses alleged for the purpose of substituting names of Defendants whose identities will be disclosed in discovery and should be made parties to this action.

CLASS ALLEGATIONS

12. Plaintiffs bring this claim on behalf of the following case, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

13. The Class consists of:

- a. all individuals with addresses in the State of California;
- b. to whom Defendant SCS sent a collection letter attempting to collect a consumer debt;
- c. that states they will not submit negative credit report until the expiration of a time period described above without describing a time period anywhere in their letter;
- d. which letter was sent on or after a date one (1) year prior to the filing of this action and on or before a date twenty-one (21) days after the filing of this action.

1 14. The identities of all class members are readily ascertainable from the
2 records of Defendants and those companies and entities on whose behalf they
3 attempt to collect and/or have purchased debts.
4

5 15. Excluded from the Plaintiff Classes are the Defendants and all officer,
6 members, partners, managers, directors and employees of the Defendants and
7 their respective immediate families, and legal counsel for all parties to this
8 action, and all members of their immediate families.
9

10 16. There are questions of law and fact common to the Plaintiff Classes,
11 which common issues predominate over any issues involving only individual
12 class members. The principal issue is whether the Defendants' written
13 communications to consumers, in the forms attached as Exhibits A, violate 15
14 U.S.C. §§ 1692e, and 1692f.
15

16 17. The Plaintiffs' claims are typical of the class members, as all are based
17 upon the same facts and legal theories. The Plaintiffs will fairly and adequately
18 protect the interests of the Plaintiff Classes defined in this complaint. The
19 Plaintiffs have retained counsel with experience in handling consumer lawsuits,
20 complex legal issues, and class actions, and neither the Plaintiffs nor their
21 attorneys have any interests, which might cause them not to vigorously pursue
22 this action.
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1 18. This action has been brought, and may properly be maintained, as a
2 class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil
3 Procedure because there is a well-defined community interest in the litigation:
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5 a. **Numerosity:** The Plaintiffs are informed and believe, and on that
6 basis allege, that the Plaintiff Classes defined above are so
7 numerous that joinder of all members would be impractical.
8

9 b. **Common Questions Predominate:** Common questions of law and
10 fact exist as to all members of the Plaintiff Classes and those
11 questions predominate over any questions or issues involving
12 only individual class members. The principal issue is whether the
13 Defendants' written communications to consumers, in the forms
14 attached as **Exhibit A** violate 15 § 1692e and §1692f.
15

16 c. **Typicality:** The Plaintiff's claims are typical of the claims of the
17 class members. The Plaintiffs and all members of the Plaintiff
18 Classes have claims arising out of the Defendants' common
19 uniform course of conduct complained of herein.
20

21 d. **Adequacy:** The Plaintiffs will fairly and adequately protect the
22 interests of the class members insofar as Plaintiffs have no interests
23 that are adverse to the absent class members. The Plaintiffs are
24 committed to vigorously litigating this matter. Plaintiffs have also
25 retained counsel experienced in handling consumer lawsuits,
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1 complex legal issues, and class actions. Neither the Plaintiffs nor
2 their counsel have any interests which might cause them not to
3 vigorously pursue the instant class action lawsuit.
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- 5 e. **Superiority:** A class action is superior to the other available means
6 for the fair and efficient adjudication of this controversy because
7 individual joinder of all members would be impracticable. Class
8 action treatment will permit a large number of similarly situated
9 persons to prosecute their common claims in a single forum
10 efficiently and without unnecessary duplication of effort and
11 expense that individual actions would engender.
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14 19. Certification of a class under Rule 23(b)(3) of the Federal Rules of
15 Civil Procedure is also appropriate in that the questions of law and fact common
16 to members of the Plaintiff Classes predominate over any questions affecting an
17 individual member, and a class action is superior to other available methods for
18 the fair and efficient adjudication of the controversy.
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21 20. Depending on the outcome of further investigation and discovery,
22 Plaintiffs may, at the time of class certification motion, seek to certify a class(es)
23 only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).
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26 **FACTUAL ALLEGATIONS**
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1 21. Plaintiff repeats, reiterates and incorporates the allegations contained
2 in paragraphs numbered above herein with the same force and effect as if the
3 same were set forth at length herein.
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5 22. Some time prior to August 7, 2018, an obligation was allegedly
6 incurred to John F Kennedy University.
7

8 23. The John F Kennedy University obligation arose out of a transaction
9 involving a debt incurred by Plaintiff in which money, property, insurance or
10 services, which are the subject of the transaction, are primarily for personal,
11 family or household purposes.
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13 24. The alleged John F Kennedy University obligation is a "debt" as
14 defined by 15 U.S.C. § 1692a(5).
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16 25. John F Kennedy University is a "creditor" as defined by 15 U.S.C. §
17 1692a(4).
18

19 26. John F Kennedy University contracted the Defendant to collect the
20 alleged debt.
21

22 27. Defendant collects and attempts to collect debts incurred or alleged to
23 have been incurred for personal, family or household purposes on behalf of
24 creditors using the United States Postal Services, telephone and internet.
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27 Violation I – August 8, 2018 Collection Letter
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1 28. On or about August 8, 2018, Defendant sent the Plaintiff a collection
2 letter (the “Letter”) regarding the alleged debt owed to John F Kennedy
3 University. **See Collection Letter – Attached hereto as Exhibit A.**
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5 29. The letter states:

6 As required by law, you are hereby notified that a negative credit report
7 reflecting on your credit record may be submitted to a credit reporting agency
8 if you fail to fulfill the terms of your credit obligations. But we will not
9 submit a negative credit report to a credit reporting agency about this credit
10 obligation until the expiration of the time period described above.

11 30. Defendant assures the Plaintiff that it will not submit a negative credit
12 report until the expiration of a certain time period described “above,” however,
13 nowhere on the Letter is there any description of a time period.
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15 31. In fact, earlier in the Letter the Defendant states, “WE STRONGLY
16 RECOMMEND THAT YOU MAIL YOUR CHECK TO THIS OFFICE
17 IMMEDIATELY,” implying that there is no time period being given and that
18 the payment must be given immediately to avoid further consequences such as
19 credit reporting.
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22 32. It is deceptive to promise that no negative reporting will occur within a
23 certain time period without describing the time period.
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25 33. The consumer has no way of knowing how to comply, and coupled
26 with the immediacy of the demand for payment may conclude that there actually
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1 is no time – period for which to expire and will be coerced into acting
2 immediately.

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4 34. As a result of Defendant's deceptive misleading and false debt
5 collection practices, Plaintiff has been damaged.
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8 **COUNT I**
9 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15**
10 **U.S.C. §1692e et seq.**

11 35. Plaintiff repeats, reiterates and incorporates the allegations contained
12 in paragraphs above herein with the same force and effect as if the same were
13 set forth at length herein.

14 36. Defendant's debt collection efforts attempted and/or directed towards
15 the Plaintiff violated various provisions of the FDCPA, including but not limited
16 to 15 U.S.C. § 1692e.
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18 37. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false,
19 deceptive, or misleading representation or means in connection with the
20 collection of any debt.
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22 38. Defendant violated said section by:

23 a. Making a false and misleading representation in violation of
24 §1692e(10).
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1 39. By reason thereof, Defendant is liable to Plaintiff for judgment that
2 Defendant's conduct violated Section 1692e et seq. of the FDCPA, actual
3 damages, statutory damages, costs and attorneys' fees.
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6 **COUNT II**
7 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES**
8 **ACT 15 U.S.C. §1692f et seq.**

9 40. Plaintiff repeats, reiterates and incorporates the allegations contained
10 in paragraphs above herein with the same force and effect as if the same were
11 set forth at length herein.

12 41. Defendant's debt collection efforts attempted and/or directed towards
13 the Plaintiff violated various provisions of the FDCPA, including but not limited
14 to 15 U.S.C. § 1692f.
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16 42. Pursuant to 15 U.S.C. §1692f, a debt collector may not use any unfair
17 or unconscionable means in connection with the collection of any debt.
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19 43. Defendant violated this section by unfairly failing to advise Plaintiff as
20 to the time period in which no negative credit reporting will occur.
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22 44. By reason thereof, Defendant is liable to Plaintiff for judgment that
23 Defendant's conduct violated Section 1692f et seq. of the FDCPA, actual
24 damages, statutory damages, costs and attorneys' fees.
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DEMAND FOR TRIAL BY JURY

45. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Sharde Cottonham, individually and on behalf of all others similarly situated, demands judgment from Defendant SCS as follows:

- a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative, and Jonathan Stieglitz, Esq. as Class Counsel;
- b) Awarding Plaintiff and the Class statutory damages;
- c) Awarding Plaintiff and the Class actual damages;
- d) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
- e) Awarding pre-judgment interest and post-judgment interest; and
- f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: July 31, 2019

THE LAW OFFICES OF
JONATHAN A. STIEGLITZ

By: /s/ Jonathan A Stieglitz
Jonathan A Stieglitz

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